

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID TROUPE,

Plaintiff,

v.

STEVEN BLAKEMAN, LYNN
WIERDSMA, THOMAS DELONG,
BRENDA MCKINNEY, (FNU) RN
YOUNG, (FNU) LT. MONGER, (FNU)
C/O BUTTRUM, (FNU) SGT. MILLER, L.
MCDONALD, JANE DOE (HSM),

Defendants.

CASE NO. C15-5261 RBL-KLS

ORDER DENYING PLAINTIFF'S
MOTION TO AMEND WITHOUT
PREJUDICE

Plaintiff David Troupe moves to amend his complaint. Dkt. 33. Mr. Troupe seeks to sue an additional forty-two defendants. *Id.* For the reasons stated herein, the motion shall be denied without prejudice.

BACKGROUND

This lawsuit was commenced on April 24, 2015. Dkt. 1. In his original complaint, Mr. Troupe named nine Department of Corrections (DOC) employees and one Jane Doe employee alleging they failed to protect him from self-harm and subjected him to unconstitutional conditions of confinement at the Clallam Bay Correction Center (CBCC) in 2012. Dkt. 5. Defendants filed an answer on June 25, 2015. Dkt. 25. Pursuant to the Pretrial Scheduling

1 Order dated June 26, 2015, the discovery deadline expires on December 18, 2015 and dispositive
2 motions are due by February 19, 2016. Dkt. 26.

3 Mr. Troupe filed his motion to amend on September 8, 2015 and it was noted for
4 September 25, 2015. Dkt. 33. Shortly thereafter, Mr. Troupe filed a motion for recusal and
5 therefore, this matter was stayed until November 2, 2015 when the Chief Judge ruled on the
6 motion for recusal. Dkt. 53. In light of the stay, the motion to amend is considered timely and
7 ripe for consideration at this time.

8 Defendants object to the proposed amendment because it contains only conclusory
9 allegations against these numerous individuals. Defendants also contend that the proposed
10 amendment is a vexatious expansion of litigation. Dkt. 38. In their response, Defendants outline
11 the 17 lawsuits against at least 147 individuals Mr. Troupe has filed in this court, his 28 U.S.C. §
12 1983 strike,¹ the five permanent injunctions in state court due to his abusive litigation against
13 government officials, his abuse of the discovery process in this case, and his testimony that he
14 uses the prison grievance system to “verbally assassinate” prison staff. Dkt. 38, at 2-3; Dkt. 39
15 (Declaration of Grady L. Williamson).

16 DISCUSSION

17 In his original complaint (Dkt. 5), Mr. Troupe named Steven Blakeman, Lynn Wierdsma,
18 Thomas DeLong, Brenda McKinney, Nurse Young, Lt. Monger, C/O Buttram, Sgt. Miller, C/O
19 McDonald, and CBCC HSM Jane Doe. He alleged that on August 27, 2012, he told Defendants
20 Wierdsma and Blakeman of his intent to self-harm. After he cut open his leg, Defendant Miller
21 moved him to the COA at the request of Laura Methieus and Sgt. Banner. He alleges that the

22
23 ¹Mr. Troupe has two strikes under 28 U.S.C. § 1915(g). *See* 2:2013-cv-5037-EFS (E.D. WA) and 3:14-cv-05886-BHS (W.D. WA).

1 CBCC HSM and Defendants DeLong and McKinney refused to protect him. He also alleges that
2 he continued to cut himself after he was placed back in his cell and that he threw blood around
3 his cell while Defendants Miller, McDonald, and “other c/o’s watched for approximately 30
4 seconds”, Defendant Miller smiled, someone covered his window, and he was then ignored for
5 10 hours, not provided with medical care, and forced to urinate in his cell. Defendant DeLong
6 made him clean up his blood and when he refused, Defendant DeLong ordered Mr. Troupe
7 placed in a restraint chair. He was then moved from the restraint chair to the restraint bed and
8 for the next two days was on suicide watch.

9 Mr. Troupe states that he made numerous complaints about the temperature in the cell to
10 Lt. Monger, Dr. McKinney, and RN Young. He states that he was refused a blanket but admits
11 that he was given a space heater, which he maintains was inadequate. He claims that he suffered
12 four days of cold. Dkt. 5.

13 Attachments to the complaint reflect that on September 12, 2012, less than two weeks
14 after the occurrence at issue, Mr. Troupe filed a grievance against MHP Wierdsma, CUS
15 Blakeman, Lt. DeLong and Sgt. Miller:

16 CBCC officials (MHP Wierdsma, CUS Blakeman, Lt. DeLong and Sgt. Miller)
17 violated DOC policy 630.550. On 8-27-12 I told MHP Wierdsma if put back in
18 my cell I would cut myself. She just told how concerned her a [sic] Blakeman
19 were about my safety. Blakeman was notified. I was then placed back in my cell
20 per Blakeman’s orders. I immediately cut myself open. I repetedly [sic] asked to
21 be put in the restraint and threatened to continue self harm, Lt. DeLong was
22 notified. Sgt. Miller put me in the suicide cell and watched me start cutting [sic]
23 on myself. From abou [sic] 3:30 pm to around 5:30 pm I cut myself and tossed
blood everywhere. They let me continue to periodically cut on myself for 10
hours. Eventually Lt. DeLong pulled me but so they could clean up the blood so
the administrators wouldn’t see it, this was 2:30 am. Policy doesn’t allow DOC
staff to let anyone harm themselves but at CBCC out in the middle of the woods,
its okay to let an inmate cut on himself for hours. They don’t have a mental
health unit nor staff trained and ready to be professional re self-harm situations.

1 Dkt. 5, p. 12. Mr. Troupe received a response to his grievance on November 29, 2012:

2 This complaint was investigated by Katrina Henry, Health Care Manager. During
3 the investigation she reviewed initial complaint and corresponding response and
4 appeal, Suicide Watch Log Book and related Incident Report and corresponding
5 documents. You were interviewed telephonically.

6 Information gathered during the investigation shows that you were placed on a
7 suicide watch due to statements that you made regarding inflicting self-harm.
8 You were placed in a wheelchair prior to being placed on a suicide watch. This
9 was done to protect you from yourself. The types of restraints applied are
10 determined by either medical or mental health staff in collaboration with custody
11 staff, not by offenders. Your injuries were examined and determined to be non-
12 life threatening. It was further noted that you refused medical treatment.

13 Based on the information presented, it appears that your injuries were superficial
14 and not life-threatening however you were placed on a suicide watch so that your
15 actions could be closely monitored. Actions taken by staff are deemed
16 appropriate. No further actions required at this time.

17 Dkt. 5, p. 13.

18 Around the same time, Mr. Troupe filed a second grievance complaining about the
19 temperature in his cell and complaining that the heater on the outside of the door did not warm
20 up the inside of his cell and that the ventilation in the cell was so powerful and cold it forced the
21 heat away from his door. Dkt. 5, at p. 15 (Level II Appeal, original grievance not attached).

22 On November 27, 2012, Mr. Troupe received the following response:

23 This grievance was investigated by D. Taber, Correction Lieutenant (Lt). During
the investigation he reviewed initial complaint and corresponding response and
appeal., DBCC Suicide Watch Post Orders, Suicide Watch Log Book and
interviewed you (telephonically).

A review of the Suicide Watch Log Books shows that on one occasion the cell
temperature dropped below 68 degrees. The Log Book also shows that a portable
heater was placed by the inner cell door and shortly thereafter you were provided
with a smock and a mattress.

Information gathered during the investigation indicates that a portable heater was
provided when the cell temperature dropped below 68 degrees and that you were
also provided a smock for additional warmth. At no time while you were on

1 suicide watch does the Log Book show that you complained about the cell
 2 temperature or requested that a heater be placed in the observation cell as you
 3 allege. Based on the information presented, it appears that the heating and
 ventilation in the observation are adequate and that no changes are warranted. No
 further action required at this time.

4 *Id.*

5 In the Level III response to this grievance, further clarification regarding the temperature
 6 in the cell was provided:

7 The level II stated that the cell temperature dropped below 68° one time. In fact,
 8 the investigation showed that it dropped below 68° twice. However, in both
 9 instances staff used the heater and the temperature rose above 68°. You claim
 10 that the heater doesn't heat the cell, but the log entries show otherwise. The level
 11 II investigation and response showed that staff took the steps necessary to adjust
 the heat when necessary. It also established that you didn't complain about the
 cell temperature while you were in the cell. You have not provided any additional
 information at level 3.

12 Dkt. 5, p. 16.

13 These same grievances are attached to Mr. Troupe's proposed amended complaint. *See*
 14 Dkt. 33-1, pp. 15-20. In his motion to amend, Mr. Troupe states that he was abused over a four
 15 day period "so all CBCC staff that was there on the COA (Closed Observation Area) has been
 16 located and are named in the amended version." Dkt. 33, at 1.

17 **DISCUSSION**

18 Rule 15(a) provides that "[t]he court should freely give leave [to amend] when justice so
 19 requires." Fed.R.Civ.P. 15(a)(2). "This policy is 'to be applied with extreme liberality.'" *Eminence*
 20 *Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir.2003) (quoting *Owens v. Kaiser*
 21 *Foundation Health Plan, Inc.*, 244 F.3d 708, 712). "Absent prejudice, or a strong showing of any of
 22 the remaining *Foman v. Davis*, 371 U.S. 178, 83 S. Ct. 227, 9 L.Ed.2d 222 (1962) factors, there
 23 exists a *presumption* under Rule 15(a) in favor of granting leave to amend." *Id.* The *Foman* factors

1 include: “[1] undue delay, bad faith or dilatory motive on the part of the movant, [2] repeated failure
2 to cure deficiencies by amendments previously allowed, [3] undue prejudice to the opposing party by
3 virtue of allowance of the amendment, [and] [4] futility of amendment.” *Eminence Capital*, 316 F.3d
4 at 1052 (quoting *Foman*, 371 U.S. at 182, 83 S. Ct. 227) (internal quotation marks omitted).

5 To state a claim under § 1983, a plaintiff must allege facts showing (1) the conduct about
6 which he complains was committed by a person acting under the color of state law; and (2) the
7 conduct deprived him of a federal constitutional or statutory right. *Wood v. Ostrander*, 879 F.2d
8 583, 587 (9th Cir. 1989). In addition, to stating a valid § 1983 claim, a plaintiff must allege that
9 he suffered a specific injury as a result of the conduct of a particular defendant, and he must
10 allege an affirmative link between the injury and the conduct of that defendant. *Rizzo v. Goode*,
11 423 U.S. 362, 371-72, 377 (1976); *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981); *Sherman*
12 *v. Yakahi*, 549 F.2d 1287, 1290 (9th Cir. 1977). Sweeping conclusory allegations against an
13 official are insufficient to state a claim for relief. The plaintiff must set forth specific facts
14 showing a causal connection between each defendant’s actions and the harm allegedly suffered
15 by plaintiff. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980).

16 The majority of Mr. Troupe’s amended complaint consists of listing numerous
17 individuals followed by general and vague allegations that his constitutional rights were violated.
18 However, in the grievance filed by Mr. Troupe merely 12 days after the incident at issue, he
19 grieved the conduct of only four individuals (MHP Wierdsma, CUS Blakeman, Lt. DeLong and
20 Sgt. Miller). He asked that these four staff members be reprimanded for allowing him to harm
21 himself repeatedly when they had the option of placing him on the restraint bed. Dkt. 33-1, at
22 15. Over three years later, Mr. Troupe names 49 individuals and alleges that they all were aware
23 (by looking at the log book and emails) that he was self-harming, left without a toilet, kept in

1 freezing conditions, and purposefully sleep-deprived from August 27, 2012 to August 30, 2012.
2 Dkt. 33-1, pp. 8-9. This type of allegation is not sufficient. In addition, some of Mr. Troupe's
3 allegations, while specific, fail to state an Eighth Amendment violation. For example, he alleges
4 that Bart S. Ablanalp failed to prepare a suicide prevention plan even though he received e-mails
5 regarding Mr. Troupe from other facilities for years. However, Mr. Troupe also alleges that all
6 CBCC staff received warnings of his prior self-harm and suicide attempts from Washington State
7 Penitentiary, Washington Corrections Center, Stafford Creek Corrections Center, and Monroe
8 Corrections Center of his prior self-harm and suicide attempts and were relying on this
9 information. *Id.*, p. 3, 10-11.

10 The Court notes that there are a few specific allegations contained in Mr. Troupe's
11 proposed amended complaint that may satisfy the requirement of alleging facts specific enough
12 to show a causal connection between each defendant's actions and the harm allegedly suffered
13 by plaintiff. For example, Mr. Troupe alleges that Dan Miller, Steven Weed, and J. Marcias
14 watched him self-harming but covered all the COA windows and ignored him. Thus, and to the
15 extent Mr. Troupe has good faith allegations that specifically named individuals violated his
16 constitutional rights and caused him harm while he was in the COA from August 27, 2012 until
17 August 30, 2012, he may seek leave to amend to include those allegations only.

18 Mr. Troupe's motion for leave to file the proposed amended complaint (Dkt. 33-1) as
19 written is denied for failure to allege facts indicating how the majority of the individuals named
20 were personally involved in any constitutional violation.

21 Accordingly, it is **ORDERED**:

22 (1) Plaintiff's motion for leave to amend (Dkt. 33) is **DENIED without prejudice**.
23

1 (2) The Clerk shall send a copy of this Order to Plaintiff and to counsel for
2 Defendants.

3 DATED this 10th day of November, 2015.

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6 Karen L. Strombom
7 United States Magistrate Judge
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